IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 68744-M of 2006

DATE OF DECISION : 07.12.2006

Anil

.... PETITIONER

Versus

State of Haryana

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Rakesh Nehra, Advocate,
for the petitioner.

Mr. Partap Singh, Senior D.A.G., Haryana.

* * *

Petitioner Anil has filed this petition under Section 427 (2) read with Section 482 of the Code of Criminal Procedure for ordering the sentence awarded to him under Section 9 of the Haryana Good Conduct Prisoners (Temporary) Act, 1988 (hereinafter referred to as `the Act') vide judgment and order dated 28.11.2005/ 30.11.2005, passed by Judicial Magistrate Ist Class, Sonepat, in case FIR No. 224 dated 1.8.2002, registered at Police Station City Sonepat, to run concurrently with the previous order of sentence.

2. The petitioner was convicted and sentenced under Sections 302 and 498-A IPC in case FIR No. 615 dated 28.10.1998 registered at Police Station City Sonepat vide judgment and order dated 11.7.2001/14.7.2001 and was undergoing sentence of life imprisonment. He was granted parole from 20.6.2002 to 19.7.2002. But he over stayed for a period of 40 days and surrendered only on 29.8.2002. During this period, the aforesaid FIR No. 224 was registered against him on 1.8.2002, in which he has been convicted and sentenced under Section 9 of the Act to undergo rigorous imprisonment for a period of six months. It has also been observed in the order of sentence

that the period of six months of sentence shall be in addition to the sentence already passed for the offence for which he has already been convicted. Thus, the petitioner is seeking modification in this part of the order of sentence to the extent that in view of Section 427 (2) Cr.P.C., the sentence passed in the subsequent case be ordered to run concurrently with the previous sentence.

3. Pursuant to the notice issued by this Court, reply on behalf of the respondent-State has been filed in Court today. The same is taken on record.

4. Counsel for the petitioner contends that the subsequent punishment awarded to the petitioner is term sentence, therefore, the same should be ordered to run concurrently with the sentence of life imprisonment. I do not find any merit in this contention. Section 8 (1) of the Act provides that on the expiry of the period for which a prisoner is released under the Act, he shall surrender himself to the Superintendent of the Jail from which he was released. Sub-section (2) provides that if a prisoner does not surrender himself as required by sub-section (1) within a period of ten days from the date on which he should have so surrendered, he may be arrested by any Police Officer or Prison Officer without a warrant and shall be delivered over to the officer incharge of the prison from which he was released to undergo the unexpired portion of his sentence. Section 9 of the Act, which provides for penalty for failure to surrender, reads as under :-

> **9. Penalty for failure to surrender –** (1) Any prisoner who is liable to be arrested under sub-section (2) of section 8, shall be punishable with imprisonment of either description which may extend to three years and with fine.
>
> (2) An offence punishable under sub-section (1) shall be deemed to be cognizable and non-bailable.
>
> *Explanation :-* The punishment in this section is in addition to the punishment awarded to the prisoner for the offence for which he was convicted.

The explanation to Section 9 of the Act clearly provides that the punishment given to the prisoner for violating Section 8 of the Act will be in addition to the punishment awarded to the prisoner for the offence for which he was convicted. The Act is a special statute and the provision of Section 9 will over-ride the general law. Hence, in my opinion, the provision of Section 427 Cr.P.C., will not be applicable and the sentence awarded to a prisoner for a jail offence cannot be ordered to run concurrently. The object of jail punishment is to maintain discipline in the jail. In case, the sentence awarded for the jail punishment is ordered to run concurrently with the sentence already awarded to the prisoner, then the object itself will be frustrated. Thus, in my view, the prayer made by the petitioner for ordering the sentence awarded to him for the jail punishment to run concurrently with the main sentence cannot be accepted.

5. In view of the above, I do not find any merit in the instant petition and the same is, therefore, dismissed.

December 07, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**